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OFFICE OF PETITIONS

In re Application of
Takashi Suzuki
Application No. 10/743,824
Filed: December 24, 2003
Attorney Docket No. 25-257

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ON PETITION

This is a decision on the "RENEWED PETITION TO CORRECT FILING DATE", filed July 23, 2004, which is being treated as a petition under 37 CFR 1.53(e)(1) to accord the above application a filing date of December 29, 2003.

The petition is **DISMISSED**.

Petitioner argues that the above-identified application was deposited in a drop box with the Office of Initial Patent Examination (OIPE) on December 26, 2003.¹ However, as December 26, 2003 was a federal holiday, petitioner states that the application should be accorded a filing date of the next business day, or December 29, 2003. Petitioner argues that the application should not be accorded the presently accorded filing date of December 24, 2003.

¹ An Office investigation into the matter has revealed that the OIPE drop box was locked at midnight on December 24, 2003, and was not opened again for deposits until December 29, 2003.


An applicant alleging that an application was accorded the incorrect filing date has the burden of proving that allegation by a preponderance of the evidence. An applicant may rely on the "Express Mail" provisions of 37 CFR 1.10 to accord an application the filing date as of the "date-in" on the "Express Mail" mailing label. Applicant may also submit an itemized, USPTO date-stamped postcard receipt, identifying the application. A postcard receipt which itemizes and properly identifies the filed items serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See MPEP 503.

Here, applicant did not file the application under the provisions of 37 CFR 1.10. In addition, applicant did not submit a USPTO date stamped postcard receipt. The postcard receipt applicant submitted on petition does not contain a USPTO date stamp.

The only evidence applicant has proffered in support of his allegation that the application was not deposited on December 24, 2003 is that the application transmittal letters and the filing fee check were all "dated" December 26, 2003. This is not sufficient evidence to accord the application a filing date.

The application is an image file wrapper (IFW), and as such, no forwarding of the file is required. A message will be sent to the Office of Initial Patent Examination to continue processing the application using the original application filing date of December 24, 2003, using the application papers filed on that date.

Telephone inquiries should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

for 
Charles Pearson
Director
Office of Petitions